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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,843	07/14/2000	Peter Nash	C150.12.3B	6411

7590 10/07/2005

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EXAMINER

HUYNH, PHUONG N

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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EXAMINER

Huynh, PN

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09302005

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Commissioner for Patents

The Reply Brief and exhibit filed 6/9/04 and 9/28/05 have been considered but not found to be persuasive.

Appellants submit a publication "The effect of dietary chicken egg-yolk antibodies on clinical response in weaned pigs challenged with a K88+ Escherichia coli isolati". J. Swine Health Prod 204: 12(3): 119-122. The study reported in this publication states that the egg-yolk-antibody IgY product did not protect susceptible pigs from developing diarrhea as a result of oral challenge with E coli. This study follows the teachings of Tokoro which is the primary prior art reference in the rejection of the claims 14-16, 19-24 and 27-32 based on 35 U.S.C. 103(a). The results noted in this publication are contrary to the Examiner's contention of a reasonable expectation of producing the claimed invention. It also is evidence that the claimed invention is not obvious to a person of ordinary skill in the art. The exhibits shows that E coli O157:h7 bound to O157 antibody coated bead. The binding action of the egg immunoglobulins to appellants' claimed method promoting the growth of food animals is a discovery beyond the teachings of the prior art.

In response, the claimed method is only as good as the binding specificity of the egg IgY immunoglobulin to the bacteria in the rumen or intestinal tracts of food animal. Obviousness does not require absolute predictability but only the reasonable expectation of success. See In re Merck and Company Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986); and In re O'Farrell, 7 USPQ2d 1673 (Fed. Cir. 1988). It is noted that that the method of making egg IgY immunoglobulin to bacteria of interest is the same method as that taught by Tokoro et al ('895 patent) (see page 5 of Examiner's answer). The in vitro binding of E coli O157:h7 to O157 antibody coated bead (Exhibit) does not prove the claimed method is effective for promoting the growth of food animals, or protect susceptible animal from developing diarrhea, it merely shows the binding specificity of the antibody in the claimed method. The evidence of purported unobvious results of record in this application is insufficient to overcome the inference of fact in this case. Therefore the above claims remain rejected under 35 USC 103 for the reasons above and reasons of record. The application has been forwarded to the Board of Patent Appeals and Interferences for decisions on the appeal.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Huynh "NEON" whose telephone number is (571) 272-0846. The examiner can normally be reached Monday through Friday from 9:00 am to 5:30 p.m. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841. The IFW official Fax number is (703) 872-9306.

Any information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at

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• • 866-217-9197 (toll-free).

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Patent Examiner
Technology Center 1600
September 30, 2005


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